

STATEMENT OF
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BEFORE THE
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

“The Transformation of the Puerto Rico Electric Power Authority (PREPA)”
July 23, 2020 at 3:30 p.m.

I. Introduction

Good afternoon Chair Grijalva, Ranking Member Bishop, Congresswoman González-Colón, and Members of the Committee.

My name is Edison Avilés-Deliz, and I am the Chair of the Energy Bureau of the Puerto Rico Public Service Regulatory Board (“PREB”).¹ I am a licensed electrical engineer with a specialty in power and control systems and an attorney with a Masters in Energy Law from the Vermont Law School. I joined PREB in June 2018.

PREB is an independent, regulatory body consisting of five (5) commissioners. The Commissioners have equal voting powers. The PREB has a mandate to implement and enforce the energy public policy, as well as to adopt the regulations necessary for such implementation.

We acknowledged receipt of your letter dated July 15, 2020, inviting us to testify before the Committee on Natural Resources of the House of Representatives at an oversight hearing concerning *The Transformation of the Puerto Rico Power Electric Authority (PREPA)*. We appreciate the opportunity afforded to present our views regarding this important matter.

As this Committee is aware, in 2017 Hurricanes Irma and María devastated Puerto Rico’s already precarious electric system. Significant efforts have been and continue to be underway to rebuild the electricity system for Puerto Rico. I am here today to discuss the significant public policy changes that govern PREPA’s transformation as well as PREB’s crucial role in this process to ensure a successful transformation.

Having a strong and effective regulator is crucial to a stable and robust electric delivery system. The PREB is an independent regulator but subject to judicial review. This stability fosters an environment where long-term plans and strategies can succeed.

¹ Formerly known as the Puerto Rico Energy Commission.

Having a strong and effective regulator is a major pillar of the energy transformation in Puerto Rico. Significant positive changes intended to rebuild public confidence have taken place since the last time the energy regulator testified to Congress.²

II. A Strong, Effective Regulator:

The PREB was created in 2014 by the *Puerto Rico Energy Transformation and RELIEF Act*³ serving as a key component for the full and transparent implementation of the Act's energy reform goals. Specifically, the PREB has the responsibility to regulate, monitor and enforce the energy public policy of the Government of Puerto Rico. PREB has a mandate to ensure electric service is safe, reliable, and affordable. PREB is an active member of the National Association of Regulatory Utility Commissioners ("NARUC") with several commissioners serving key roles within the Association. I serve in the Advisory Board of NARUC's Regulatory Training Initiative ("RTI") and Associate Commissioner Lilliam Mateo-Santos is a member of NARUC's Emergency Preparedness, Recovery and Resiliency Task Force.

1. Expertise

a. Commissioners

By statute,⁴ PREB Commissioners have diverse professional backgrounds. The current Bureau has exceptionally professionally qualified commissioners. Currently, two commissioners hold dual degrees in engineering and law, and are licensed in both professions, one commissioner is a seasoned energy, land use, and environmental attorney that serves as the Second Vice President for the Southeast Association of Regulatory Utility Commissioners ("SEARUC") and one commissioner is a licensed engineer specialized in the design of electrical power systems. There is one vacancy.

b. Nationally Recognized Technical Resources

PREB has recognized experts in the regulatory field to assist its informed and grounded regulatory development. These resources include former commissioners and staff from multiple U.S. Public Utility Commissions ("PUCs") as well as experts in the areas of energy regulatory affairs, economics, engineering, energy efficiency and resource/system/operations planning, among others. These experts also provide consulting services through the US and other international jurisdictions.

² "Puerto Rico's Electric Grid", Senate Energy and Natural Resources Committee, May 8, 2018.

³ Act 57-2014, as amended.

⁴ Section 6.6 of Act 57-2014, as amended.

c. Department of Energy (“DOE”) Technical Assistance

The DOE’s Office of Electricity (“DOE-OE”) has provided and continues to provide significant technical assistance in the areas of electric distribution planning and energy efficiency program development. The interface among stakeholders, the utility and the subject matter experts facilitated by DOE-OE has provided the PREB a clear view of the technical current state-of-affairs at the utility, including the foundational investments that are needed to support the right sequencing of the resilience buildup efforts that are a significant operational goal for the grid.

i. NARUC’s Exchange Initiative⁵

With support from DOE, NARUC and PREB resources, a delegation of nine utility commissions (PR, MI, PA, HI, FL, NY, MO, MS, and NJ) assembled for an initial exchange in San Juan during February 2020. This initial exchange represents a preliminary step in laying the foundation for a future Staff rotational program to send mainland utility Commission Staff to Puerto Rico to support the PREB with additional capacity and expertise that targets specific needs.

- New York Department of Public Service

Arising from the NARUC’s Exchange Initiative, PREB is currently receiving invaluable support from the New York Department of Public Service (“NYDPS”). The NYDPS is sharing its expertise and experience with the oversight of the Amended and Restated Operation Services Agreement entered by the Long Island Power Authority (“LIPA”) and PSEG Long Island, LLC, in accordance with the *LIPA Reform Act*. Under this contractual arrangement, comparable to the PREPA private third-party transmission and distribution system maintenance and operating arrangement, LIPA outsourced the operation and maintenance of its public utility grid and delivery services to a private third-party operator, PSEG Long Island. PREPA with the Puerto Rico Public-Private Partnership Authority (“P3 Authority”) and LUMA Energy have recently entered a similar contractual arrangement. Both arrangements resulted from legislation enacted to address challenges exacerbated by weather events – Hurricane Sandy in New York (2012) and Hurricanes Irma and María in Puerto Rico (2017). Both New York and Puerto Rico’s third-party arrangements seek to maximize federal recovery funds for increasing system resilience. The third-party contractual accountability of these arrangements and their independent regulatory oversight are critical to ensure that performance and rate incentives align with the public interest. The PREB is currently developing the Oversight Implementation Plan for the PREPA/(P3 Authority)-LUMA Transmission and Distribution Operation and

⁵<https://www.fortnightly.com/fortnightly/2020/05/forging-regulatory-bridge-puerto-rico?authkey=6e034479ae939210ef3e50f8efae93f75a4580105a3819aa9dfe04b33060e604>.

Maintenance Agreement (“T&D OMA”) using the NYDPS’s regulatory oversight⁶ as a model. I want to highlight our appreciation to our counterparts in New York and look forward to continued engagement.

2. Notable Proceedings

Although a fairly new regulatory agency, responsible to guide and oversee the statutory transformation of the electric industry in Puerto Rico, the PREB is already conducting numerous proceedings that account for significant steps in advancing the transformational goals of reliability, sustainability and cost effectiveness.

a. Rate Case⁷

This is a landmark proceeding. For the first time, electric service rates have been set in Puerto Rico by an independent regulator based on evidence and testimony produced under oath, eliminating rates that had not been revised for 27 years. The PREB implemented the new permanent rates on May 1, 2019 and approved several riders designed to be reviewed no more than every quarter⁸ to limit the frequency of when the electric bill could vary. A modified tariff book was also adopted on May 22, 2019.

b. Integrated Resource Plan (“IRP”)⁹

The IRP is the cornerstone and roadmap of the energy transformation of the Island. The PREB is currently evaluating the utility’s proposed IRP against the renewable resource goals set out in the *Puerto Rico Energy Public Policy Act* (Act 17-2019). The IRP proceeding had numerous intervenors, five (5) days of technical hearings and five (5) days of local public hearings (Ponce, Mayagüez, Arecibo, Humacao, San Juan) during February 2020. Final briefings were completed in April 2020. We expect the Final Resolution, which will consist of (i) a summary of PREB’s analysis of thousands of pages of technical documentation; (ii) PREB’s findings and conclusions; and (iii) specific actions for implementation, to be issued in August 2020. IRPs are reviewed on a three (3) years cycle.

⁶ The NYDPS provides oversight to the implementation of the LIPA-PSEG Operations Services Agreement, where PSEG Long Island, LLC took over management and operation of LIPA’s electric system and on January 1, 2014 became responsible for LIPA’s day-to-day operations, including: budgeting, maintenance, storm preparedness and response, infrastructure improvements, and energy efficiency and renewable activities.

⁷ CEPR-AP-2015-0001.

⁸ In Re: Puerto Rico Electric Power Authority Rate Review, Case No. CEPR-AP-2015-0001, Final Resolution and Order, January 10, 2017, pp. 130-131, ¶¶377-378.

⁹ CEPR-AP-2018-0001.

c. Energy Efficiency (“EE”) Program Development¹⁰

By statute, the PREB has authority over the EE program.¹¹ This proceeding seeks to ensure an energy efficiency goal of thirty percent (30%) is reached by 2040. Energy efficiency is always the least cost resource. Lowering demand can be achieved at far less cost than new generation with its associated transmission and distribution. It also lessens dependence on oil-fired generation. Finally, with enhanced ability to better measure demand reduction that allow energy efficiency to participate as a firm resource, it can increase system stability.

A successful EE program is key to achieving the energy sustainability goals of the Puerto Rico Energy Public Policy Act. However, the insolvency currently experienced by the utility is a barrier to the successful implementation of energy efficiency programs for the Puerto Rico electric consumer.

With support from the DOE, we are holding a virtual stakeholder engagement event on July 31st to consider best approaches to deploy energy efficiency measures in Puerto Rico. Presenters include nationally recognized EE experts, resources from the Lawrence Berkeley National Laboratory, the USDA Rural Development Electric Program, the American Council for an Energy Efficient Economy (“ACEEE”), the National Association of State Energy Officials (“NASEO”), the Arkansas Public Service Commission, and the Ouachita Electric Cooperative.

d. Regulation on Electric Energy Wheeling¹²

This Regulation was adopted and enacted in September 2019 to implement the energy wheeling mechanism in Puerto Rico, in accordance with applicable legislative mandates. More specifically, to implement a system that allows an exempt business, dedicated to the production of energy, as described in Section 2(d)(l)(H) of Article 1 of Act No. 73-2008, as amended, known as the Economic Incentives Act for the Development of Puerto Rico, or similar provisions in other incentive laws, as well as Electric Power Service Companies, Micro grids, Energy Cooperatives, Municipal Ventures, Large Industrial and Commercial consumers, and Community Solar and other demand aggregators, to participate in the energy wheeling mechanism in Puerto Rico.

e. Regulation Energy Cooperatives in Puerto Rico¹³

¹⁰ NEPR-MI-2019-0015.

¹¹ See Section 6.29B(a) Act 57-2014.

¹² <https://energia.pr.gov/wp-content/uploads/2020/02/9138-Regulation-on-Electric-Energy-Wheeling.pdf>

¹³ <https://energia.pr.gov/wp-content/uploads/2019/10/9117-Regulation-on-Energy-Cooperatives.pdf>

Through the adoption of this Regulation in October 2019, the PREB contributes to the public policy established by the Government of Puerto Rico to promote the development of a de-centralized energy model capable of providing renewable energy options to the residents of Puerto Rico, which strengthens the electric system resilience to natural disasters.

f. Preliminary T&D OMA Certificate of Energy Compliance¹⁴

PREPA is required to obtain an Energy Compliance Certificate from the PREB for every transaction it enters. PREB must certify that a preliminary contract complies with the energy public policy and regulatory framework established by Puerto Rico's Energy Public Policy Act.¹⁵ On June 17, 2020, the PREB issued a Certificate of Energy Compliance for the preliminary T&D OMA between PREPA/(P3 Authority) and LUMA. It is important to note that the T&D OMA acknowledges the PREB's regulatory authority to ensure this compliance by LUMA, as the T&D Operator.

3. Strong Regulatory Landscape

The previous notable proceedings demonstrate the strong comprehensive regulatory landscape created by Act 57-2014 and Act 17-2019. More significantly, this landscape includes an enforcement infrastructure for compelling compliance with the statutory transformational measures to develop a reliable and sustainable electric system.

a. PREB's Enforcement Mechanisms – Real Incentives/Real Penalties

The recently adjudicated T&D OMA provides the PREB with real teeth for enforcement. The private T&D Operator has a financial incentive¹⁶ to improve system performance according to metrics approved by the PREB.¹⁷ The PREB can also fine the T&D Operator for noncompliance with its regulations.¹⁸ In the past, imposing fines on PREPA effectively meant fining the Puerto Rico government, thus negatively impacting the people of Puerto Rico twice. Third-party accountability means that any potential penalties imposed on the private T&D Operator will erode its fixed fee payments under the contract. Having this regulatory tool available to the PREB is nothing short of transformational.

¹⁴ NEPR-AP-2020-0002.

¹⁵ Section 5(g), Act 120-2018.

¹⁶ See Annex IX and X of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement.

¹⁷ *Id.* Section 4.2(f).

¹⁸ *Id.* Section 7.6 (a)(ii).

b. Independent Office of Consumer Protection (IOCP)

The electric regulatory landscape in Puerto Rico is well supported by a strong legal framework that directs the Independent Office of Consumer Protection (IOCP) to represent and defend, among others, the energy services customer in all matters in front of the PREB, including the IRP, rate revisions, electric utility bill disputes and disputes originating from customer dealings with electric service companies.

III. Hurricanes Irma and María (2017) and Earthquake Events (2020)

We are all familiar with the devastating impact that Hurricanes Irma and María had on the electric grid in Puerto Rico in 2017 and its inability to quickly recover. We all also recognize that this cannot happen again. Significant actions, including those I have described earlier, have been taken that together is already advancing this objective.

1. Puerto Rico Electric Power Transformation Act – Act 120-2018

Act 120-2018 addresses longstanding electric utility deficiencies that were clearly exposed during the aftermath of hurricanes Irma and María and the earthquake events of 2020. This Act authorizes the legal framework required for the transfer of the operation and maintenance of PREPA's Transmission and Distribution systems. This Act enabled the PREPA/(P3 Authority)-LUMA T&D OMA that went into effect on June 22, 2020.

2. Puerto Rico Energy Public Policy Act – Act 17-2019

Act 17-2019 was enacted for the purposes of establishing Puerto Rico's public policy on energy in order to set the parameters for a **resilient**, reliable, and robust energy system with just and reasonable rates for all customer classes; make it feasible for energy system users to produce and participate in energy generation; facilitate the interconnection of distributed generation systems and microgrids, and unbundle and transform the electrical power system into an open system.

a. Increased System Resilience

The restoration work is now complete. The next phase of reconstruction needs to follow an orderly plan based on sound economic and engineering principles. The recently adjudicated T&D OMA assigns the T&D Operator with the responsibility of implementing long-term strategies to plan the electric system for increased resilience and in compliance with the energy public policy.

b. Fully Accessible Stakeholder Engagement

To increase the transparency of regulatory proceedings affecting the energy sector in Puerto Rico, the PREB embarked in a series of stakeholder engagement activities that continue to this date. All stakeholder engagement events are simulcast in Spanish/English onsite and over the internet to facilitate participation from all Puerto Ricans. To our knowledge, we are the only energy regulatory commission in the U.S. that offers these accommodations. These stakeholder activities support the following energy public policy elements:

- *Electric Distribution Planning*
The DOE-OE has made available subject matter experts during this comprehensive Initiative that have meaningfully engaged with PREPA's technical resources on what would be the most effective sequencing to build up system resilience. Given the multitude of utilities helping to expedite restoration after the hurricanes of 2017, the electric distribution system needs to be baselined in the utility GIS to ensure effective planning/reconstruction. Three (3) working groups were created to support this Initiative, (1) Electric Infrastructure Resilience, (2) Hosting Capacity/Data Availability, and (3) Planning Coordination. This Initiative has also benefited from collaborations from the Hawaii PUC and the Hawaiian Electric Company ("HECO").
- *Interconnection Rules*
Considers methods, technologies, and standards to streamline the interconnection process to best support increased integration of renewable sources.
- *Renewable Energy Certificate ("REC") Market*
Considers the elements for the effective creation of the REC market in Puerto Rico, the challenges arising from its implementation as reflected in Act 82-2010, and mechanisms to efficiently support its operation.
- *Energy Efficiency*
With technical assistance from the DOE, the PREB has held several stakeholder engagements events to consider different approaches to best deploy an effective energy efficiency program incorporating measures that address the specific characteristics of the Island.

c. Renewable Portfolio Standard ("RPS")

The new goals for compliance with the RPS: are 20% by 2022, 40% by 2025, 60% by 2040, and 100% by 2050.

IV. Strong and Efficient Oversight of the Electric Infrastructure Reconstruction [Federal Recovery Funding]

1. The Transmission and Distribution Operation and Maintenance Agreement (“T&D OMA”)¹⁹

Under the T&D OMA, an independent third-party private operator assumes operational control and management of PREPA’s electric grid. This operator has responsibility for long-term plans and strategies to expand and upgrade the Island’s grid, proposals for resilience buildup of the electric infrastructure, and management of federal recovery funding. The emphasis is on rebuilding to meet current national codes and standards and to integrate electric industry best practices that will make it easier to interface with other U.S. Mutual Aid utilities during emergency responses. It is important to highlight that even though system plans may have existed or may still exist for the electric grid in Puerto Rico, all T&D system planning and operations are now the responsibility of the T&D Operator, who is subject to the full oversight of the PREB. It is expected that LUMA, as the T&D Operator, will be able to commence implementation immediately of well-studied long-term strategies to improve reliability that assures federal recovery funding is effectively and efficiently invested to build up the resilience of the Island’s electric network system.

2. The private T&D Operator is subject to PREB’s oversight

The arrangement of the T&D OMA places a private operator to manage PREPA’s electric grid. This operator is the single entity in charge with orchestrating the long-term plans and strategies for the electric T&D system.

- a. PREB has effective regulatory tools to ensure that the T&D Operator will comply with Puerto Rico’s energy public policy and contractual performance metrics that include:
 - i. Making the electric system more resilient to sustain weather events;
 - ii. Aligning restoration and repair time on par with similar utilities in the United States;
 - iii. Improving the reliability of the system to sustain economic and industrial growth²⁰;
 - iv. Charging affordable rates; and
 - v. Increasing adoption of clean energy.

¹⁹ <http://www.p3.pr.gov/assets/executed-consolidated-om-agreement-td.pdf>

²⁰ Consistent with attracting manufacturing opportunities to the US.

b. PREB's New Enforcement Tools

- Incentives²¹ are permitted to enhance T&D Operator's yearly payments, thus incentivizing the Operator to improve compliance with performance requirements; and
 - Fines²² – incentivize the Operator to improve compliance with performance requirements, because fines will be paid directly by the T&D Operator.
- c. The PREB has already begun interfacing with LUMA's regulatory team and have identified almost 30 deliverables that the PREB will approve and/or monitor throughout the span of the T&D OMA, the most notable of which include:
- Initial Budgets
 - System Remediation Plans
 - Performance Metrics
 - Vegetation Management Plan
 - System Operation Principles
 - Emergency Response Plan

V. Conclusion

Two Core Elements of the Energy Transformation of the Island are well underway:

1. Well-funded, professionally staffed, strong, effective, and independent electric utility regulator enabled by statute to impose penalties that will not be paid by ratepayers but will erode the fixed fee payments²³ of the contracted T&D Operator.
2. A selected T&D Operator responsible for daily operations and long-term planning of the electric system and who is properly incentivized to improve performance.

We all saw the devastation and the aftermath of Hurricane María on the frail conditions of the electric transmission and distribution systems and the earthquake events that exposed the vulnerability of legacy generation facilities, risking the safety and security of our people, particularly our most vulnerable. I was there. Millions of people were there.

Today, the people of Puerto Rico stand together with a common objective to never repeat the misfortunes experienced in that dark period of our Island's history. I am here, representing the public interest of my fellow citizens through the legal mandate that has

²¹ See Section 7.1 (c) and Annexes VII, IX and X of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement.

²² *Id.* Section 7.6 (a)(ii).

²³ See Section 7.6 (a)(ii) of the Puerto Rico Transmission and Distribution System Operation and Maintenance Agreement.

been bestowed upon the PREB, to help lead the recovery and revitalization, through industry's proven methods, and yield a dependable, resilient, clean and efficient electrical infrastructure for our people.

The transformation of our public policy regime to secure long-term benefits to the people of Puerto Rico has been significant. In three years, while the island was recovering from its extreme devastation, the leaders of Puerto Rico undertook the analysis of the mind-numbing details of the hallmarks of effective regulation. Today, I am proud to say that Puerto Rico has now a competent framework, more-than-competent human resources, and a competent plan for the future. This has come about with a remarkable effort of many to ensure a resilient and vibrant future electric sector for the Island. I want to personally thank this Committee for its support of this transformation.

I look forward to your questions and remain committed to strengthen the working relationship with the Committee for the benefit of Puerto Rico.